

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

CHARLES SHATEEK SMITH

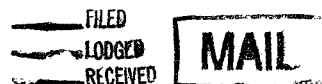
(Name of plaintiff)

No. C11-0623 RAJ

Vs.

CIVIL RIGHTS COMPLAINT  
BY A PRISONER UNDER 42  
U.S.C. § 1983 JPD

BENJAMIN L. Kelly  
SEATTLE Police Department



APR 12 2011

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY

**I. Previous Lawsuits:**

A. Have you brought any other lawsuits in any federal court in the United States while a prisoner: ☐ Yes ☒ No

B. If your answer to "A" is yes, how many? \_\_\_\_\_ Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper using the same outline).

\_\_\_\_\_  
\_\_\_\_\_

**1. Parties to this previous lawsuit:**

Plaintiff \_\_\_\_\_  
\_\_\_\_\_

Defendants \_\_\_\_\_  
\_\_\_\_\_



11-CV-00623-CMP

2. Court (give name of District) \_\_\_\_\_
3. Docket Number \_\_\_\_\_
4. Name of judge whom case was assigned \_\_\_\_\_
5. Disposition (For example, was the case dismissed as frivolous or for failure to state a claim? Was it appealed? Is it still pending?) \_\_\_\_\_
6. Approximate date of filing lawsuit. \_\_\_\_\_
7. Approximate date of disposition. \_\_\_\_\_

**II. Place of Present Confinement:** \_\_\_\_\_

A. Is there a prisoner grievance procedure available at this institution?

☒ Yes ☐ No

B. Have you filed any grievances concerning the facts relating to this complaint?

☐ Yes ☒ No If your answer is "NO", explain why not:

This Incident didn't Happen in this Facility

C. Is the grievance process completed? ☐ Yes ☒ No

If your answer is YES, attach a copy of the FINAL Grievance Resolution for Any grievance concerning facts relating to this case.

**III. Parties to this Complaint**

A. Name of Plaintiff: CHARLES S. Smith Inmate No: 839366

Address: Washington Correction Center, Po. Box 900, Shelton WA, 98584

(In item "B" below, place the full name of the defendant, his/her official position, and his/her place of employment. Use item "C" for the names, positions and places of employment of any additional defendants. Attach additional sheets if necessary.)

B. Defendant Benjamin L. Kelly : official position Police Officer

Place of employment Seattle Police department South precinct

C. Additional Defendants: Seattle police department

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IV. Statement of Claim:

Violation of the 4<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup>  
Admendment, wrongful Emprisonment

V. Relief

(State briefly exactly what you want the court to do for you. Make no legal arguments.  
Cite no cases or statues.)

Amount determind AT ~~FBI~~ Trial by a Jury.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 30<sup>th</sup> day of MARCH, 2011.

Charlie S. Smith  
(Signature of plaintiff)

Honorable John C. Coughenour

C11-0623



APR 12 2011

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
37

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES SHATEEK SMITH,

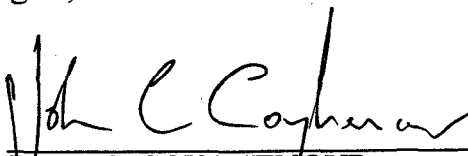
Defendant.

NO. CR09-0161-JCC

ORDER OF DISMISSAL

Based on the Motion brought by the government (Dkt. No. 37), it is hereby ORDERED that the Indictment for Defendant CHARLES SHATEEK SMITH is DISMISSED without prejudice, and the arrest warrant is herein QUASHED. Defendant's Detention Order is vacated, and Defendant should be released from custody at the earliest opportunity.

DATED this 21st day of August, 2009.

  
JOHN C. COUGHENOUR  
United States District Judge

Presented by:

/s/ C. Andrew Colasurdo  
C. ANDREW COLASURDO  
Special Assistant United States Attorneys

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES,

Plaintiff,

v.

CHARLES SHATEEK SMITH,

Defendant.

Case No. CR09-0161-JCC

ORDER

This matter comes before the Court on Defendant's Motion to Suppress Evidence (Dkt. No. 19), the Government's Response (Dkt. No. 24), and Defendant's Reply (Dkt. No. 30). Having thoroughly considered the parties' briefing, the testimony presented at the evidentiary hearing, and the remainder of the relevant record, the Court hereby GRANTS the motion for the reasons explained herein.

**I. BACKGROUND**

On January 30, 2009, at night, Seattle Police Officers David Ellithorpe and Benjamin Kelly were monitoring the intersection of Rainier Avenue South and South Henderson Street. Officer Ellithorpe was parked in the Bank of America parking lot on the Southwest corner of the intersection. (*See* Ellithorpe Statement (Dkt. No. 24-2 at 5).) Officer Kelly was driving North on Rainier Avenue. (*See* Kelly Statement (Dkt. No. 24-2 at 2).) Officer Kelly's camera was activated and recording, but Officer Ellithorpe's was not.

ORDER  
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1 A group of individuals, mostly young adults, began to cross Rainier Avenue  
2 approximately 100 feet south of the intersection, apparently to catch a southbound bus. (*Id.*)  
3 Both officers witnessed the crossing and claimed that one individual, Defendant Charles Smith,  
4 stood out from the group as being older and slower-moving. (*Id.*) The officers each briefly  
5 shined their spotlights on the group of individuals as they walked, and Officer Kelly pulled  
6 across incoming traffic, activated his overhead light, and pulled in front of the group of youths.  
7 (*Id.*) The video demonstrates that, by the time the patrol car had come to a stop, Mr. Smith had  
8 already passed in front of the car and was walking on the sidewalk. The audio track of the  
9 recording is absent for this early section of the video, so it is impossible to know what was  
10 said, but Officer Kelly testified that he said something like “you with the blue jacket, come  
11 over here.” Mr. Smith allegedly “ignored” the order and continued walking away. (*See id.*;  
12 Ellithorpe Statement (Dkt. No. 24-2 at 5).)<sup>1</sup> Officer Kelly then began yelling at Mr. Smith; this  
13 expletive-laden outburst is captured by the video recording and sounds to the Court like,  
14 “Come here. [pause] Fucking asshole, when I tell you to fucking get over here, you get the  
15 fuck over here.”

16 At this point, Officer Kelly placed Mr. Smith under arrest for Pedestrian Interference, a  
17 misdemeanor under the Seattle Municipal Code. Officer Kelly testified that no more than five  
18 seconds elapsed between when Mr. Smith crossed the street and when he was seized. A search-  
19 incident-to-arrest uncovered a concealed firearm, leading to Mr. Smith’s current federal  
20 indictment for being a felon in possession of a weapon, in violation of 18 U.S.C. § 922(g)(1).

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23 <sup>1</sup> Officer Kelly testified at the hearing that Mr. Smith did not in fact “ignore” his order,  
24 but instead turned towards him and looked him in the eye before turning back around to walk  
25 away. The Court finds this portion of Officer Kelly’s testimony not to be credible given the  
26 tension between it and his contemporaneous written statement. (*See Kelly Statement (Dkt. No.*  
24-2 at 2) (stating that “SMITH ignored my order and started walking away from me” without  
mentioning that he had turned to make eye-contact)

1 Mr. Smith now moves to suppress the weapon seized from the search-incident-to-arrest,  
2 arguing that the officers had neither probable cause to arrest him nor any reasonable,  
3 articulable suspicion that he was armed. (Mot. 1 (Dkt. No. 19); Reply 1 (Dkt. No. 30).)

## 4 II. DISCUSSION

5 The Government provides three possible justifications for the officers' search. First, it  
6 claims that the officers had probable cause to arrest Mr. Smith for Pedestrian Interference  
7 based on the manner in which he crossed the street. (Resp. 5–9 (Dkt. No. 24).) Second, it  
8 claims that the officers had probable cause to arrest Mr. Smith for Obstructing a Public Officer  
9 based on his failure to immediately comply with Officer Kelly's first order to come over. (*Id.*  
10 at 9–10.) Third, it argues that, even if the officers did not have probable cause to make an  
11 arrest, they had a reasonable suspicion that Mr. Smith was armed and therefore had authority to  
12 conduct a "pat down" search under *Terry v. Ohio*, 392 U.S. 1, 30 (1968). (*Id.* at 10–12.)

### 13 A. Pedestrian Interference

14 Seattle Municipal Code § 12A.12.015(B)(1) makes it a misdemeanor to "intentionally  
15 ... [o]bstruct[] pedestrian or vehicular traffic," which means to "walk, stand, sit, lie, or place  
16 an object in such a manner as to block passage by another person or a vehicle, or to require  
17 another person or a driver of a vehicle to take evasive action to avoid physical contact."

18 In 1990, the Washington Supreme Court considered a challenge to § 12A.12.015(B)(1),  
19 alleging that it was unconstitutionally overbroad and vague and that it violated equal  
20 protection. *City of Seattle v. Webster*, 802 P.2d 1333, 1334 (Wash. 1990). The Court upheld the  
21 statute, finding a specific intent requirement that "saves it from being unconstitutionally  
22 overbroad." *Id.* at 1338. The Court made clear that it is not enough to take an action that  
23 "consequentially block[s] traffic or cause[s] others to take evasive action"; instead, to be  
24 properly charged with Pedestrian Interference, one must "stand, sit, walk, or place an object  
25 with the *intent* to cause another person or a driver of a vehicle to take evasive action." *Id.* at  
26 1338–39 (emphasis added); *see also State v. Greene*, 983 P.2d 1190 (Wash. Ct. App. 1999)

1 (finding that officers had probable cause to believe the defendant intended to obstruct traffic  
2 because he “stepped right into the path of [an] oncoming patrol car” while “looking directly at”  
3 the car, which had to swerve to avoid hitting him.)

4 Washington’s criminal code distinguishes between “knowledge” and “intent.” *See*  
5 WASH. REV. CODE § 9A.08.010. “A person . . . acts *knowingly* . . . when . . . he or she is aware  
6 of a . . . result described by a statute defining an offense.” *Id.* § 9A.08.010(1)(b)(i) (emphasis  
7 added). In contrast, “[a] person acts . . . *intentionally* when he or she acts with the *objective or*  
8 *purpose* to accomplish a result which constitutes a crime.” *Id.* § 9A.08.010(1)(a); *see also State*  
9 *v. Caliguri*, 664 P.2d 466, 505–06 (Wash. 1983) (explaining that “‘intent’ to kill . . . means  
10 more than merely ‘knowledge’ that death will result” because “[i]ntent’ exists only if a known  
11 or expected result is also the actor’s ‘objective or purpose’”).

12 To arrest an individual for Pedestrian Interference, therefore, it is insufficient to show  
13 that the individual took an action *knowing* that it would cause traffic to stop; instead, the  
14 officers must have probable cause to believe that the “objective or purpose” of the individual’s  
15 action was to the stop traffic. *See Webster*, 802 P.2d at 1339. At the hearing, Officers  
16 Ellithorpe and Kelly repeatedly demonstrated their misunderstanding of this legal standard, as  
17 both appeared to believe that one was guilty of Pedestrian Interference whenever one takes an  
18 action that forces traffic to stop. Under *Webster*, the mere fact that traffic has to stop, or even  
19 knowledge that traffic will be stopped, is insufficient to support a charge.

20 Having independently reviewed the video from Officer Kelly’s patrol car, the Court  
21 concludes that the officers lacked probable cause to believe that Mr. Smith’s “objective or  
22 purpose” in crossing the street was to stop the flow of traffic.<sup>2</sup> Mr. Smith crossed the street

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23  
24 <sup>2</sup> “[P]robable cause’ to justify an arrest means facts and circumstances within the  
25 officer’s knowledge that are sufficient to warrant a prudent person, or one of reasonable  
26 caution, in believing, in the circumstances shown, that the suspect has committed, is  
committing, or is about to commit an offense.” *Michigan v. DeFillippo*, 443 U.S. 31, 37  
(1979).

1 more slowly than the other jaywalking individuals, who were running, but considered  
2 objectively, his pace was not exceedingly slow. Moreover, because Mr. Smith crossed the  
3 street in the middle of a group of jaywalkers, his running (rather than walking) across the street  
4 would not likely have allowed traffic to resume any sooner.<sup>3</sup> As a result, the Court finds that  
5 Mr. Smith's jaywalking at a normal walking pace does not suggest an "objective or purpose" to  
6 stop traffic.

7 At one point in the crossing, Mr. Smith slowed down and glanced at an approaching  
8 car. Officers Kelly and Ellithorpe blow this incident completely out of proportion in both their  
9 statements and their testimony. Officer Ellithorpe reported that Mr. Smith "lingered in a  
10 southbound vehicle traffic lane and stared-down the driver of one car as though challenging the  
11 motorist." (Ellithorpe Statement (Dkt. No. 24-2 at 5).) Officer Kelly went further and testified  
12 that Mr. Smith stopped in the lane and stared-down the driver "for a long period of time." The  
13 video, however, tells a far different story. As Mr. Smith reached the end of the northbound left-  
14 hand turn lane, a car approached in the southbound lane just as there was a break in the  
15 pedestrians. *Before* entering the southbound lane, Mr. Smith and another jaywalker slowed  
16 down, seemingly to determine whether the approaching car was going to forge its way through  
17 or allow them to pass in front of it. When the car stopped, Mr. Smith and the other jaywalker  
18 continued across the street. If anything, this incident undercuts the Government's theory that  
19 Mr. Smith's objective was to block traffic.

20 None of this is meant to condone or trivialize Mr. Smith's conduct. By jaywalking  
21 across a crowded arterial on a rainy night, Mr. Smith put himself, and possibly others, in  
22 danger. His leisurely pace also demonstrated a frustrating lack of respect for the value of  
23

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24 <sup>3</sup> There may have been a brief second at the end of Mr. Smith's crossing where he was  
25 the sole jaywalker blocking traffic, but this does not lead to an inference of specific intent to  
26 block traffic. Ironically, at that point, it was Officer Kelly's patrol car that was blocking the  
lane after he swerved into oncoming traffic to make the arrest.

1 others' time. However, jaywalking in a disrespectful manner is not, in and of itself, a crime.  
2 The case law makes clear that conduct only rises to the level of Pedestrian Interference if the  
3 "objective or purpose" of that conduct is to block traffic. Here, Mr. Smith's conduct would  
4 have been utterly unremarkable had he been crossing the street at a crosswalk. Any reasonable  
5 observer would conclude that the objective and purpose of his midblock crossing was simply to  
6 cross the street, not to block traffic. Therefore, Officers Kelly and Ellithorpe lacked probable  
7 cause to arrest Mr. Smith for Pedestrian Interference.

8 **B. Obstructing a Public Officer**

9 In the alternative, the Government argues that the officers had probable cause to arrest  
10 Mr. Smith for Obstructing a Public Officer. (*See* Resp. 9–10 (Dkt. No. 24).) Seattle Municipal  
11 Code 12A.16.010(A)(2) makes it a gross misdemeanor to "intentionally hinder[] or delay[] a  
12 public officer by disobeying an order to stop given by such officer." The Washington Revised  
13 Code contains a similar provision: "A person is guilty of obstructing a law enforcement officer  
14 if the person willfully hinders, delays, or obstructs any law enforcement officer in the  
15 discharge of his or her official powers or duties." WASH. REV. CODE § 9A.76.020. The  
16 Government claims that by disregarding Officer Kelly's order to "come over here," Mr. Smith  
17 was guilty of both of these obstruction statutes. (*See* Resp. 9–10 (Dkt. No. 24).)

18 Officers Kelly and Ellithorpe were lawfully entitled to "stop" Mr. Smith. Even though  
19 his crossing did not rise to the level of misdemeanor Pedestrian Interference, it undoubtedly  
20 constituted jaywalking, which is a traffic infraction in Seattle. *See* SEATTLE MUNI. CODE  
21 § 11.14.100 ("No pedestrian shall cross the roadway between adjacent intersections at which  
22 traffic-control signals are in operation, except in a marked crosswalk.") Because the officers  
23 had witnessed Mr. Smith jaywalking, they were entitled to stop him to issue a citation.<sup>4</sup>

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24  
25  
26 <sup>4</sup> Stopping him to issue a citation would not be considered an arrest, however, and  
hence could not itself justify the search-incident-to-arrest that uncovered Mr. Smith's firearm.

1           Nonetheless, Mr. Smith's actions cannot justify an arrest for obstruction. Officer Kelly  
2 testified that no more than five seconds elapsed between when Mr. Smith crossed the street and  
3 when he was actually seized by Officer Kelly. At some point in those five seconds, Officer  
4 Kelly allegedly ordered, "you with the blue jacket, come over here." On this winter night  
5 (which Officer Ellithorpe testified as being "typical Seattle" "cold and rainy") most, if not all,  
6 of the youths on the sidewalk were wearing jackets. Each of them had just crossed the street  
7 together. There is no credible evidence that, in those mere five seconds, Mr. Smith heard  
8 Officer Kelly's command or that, if he did, that he immediately understood that it was directed  
9 at him. Therefore, it would have been unreasonable to presume that Mr. Smith *intentionally*  
10 disobeyed Officer Kelly's order or *willfully* obstructed the officers in their duties. SEATTLE  
11 MUNI. CODE § 12A.16.010(A)(2); WASH. REV. CODE § 9A.76.020. Moreover, an obstruction  
12 charge requires "that the action or inaction *in fact* hinders, delays, or obstructs." *See State v.*  
13 *Contreras*, 966 P.2d 915, 919 (Wash. Ct. App. 1998) (emphasis added). The Court is  
14 unconvinced that the time-span between Officer Kelly's order and Mr. Smith's seizure (no  
15 more than five seconds) in fact caused an actual hindrance or delay. For those reasons, the  
16 officers lacked probable cause to arrest Mr. Smith for obstruction.

17           **C. Reasonable Suspicion that Mr. Smith was Armed**

18           Finally, the Government argues that Officers Kelly and Ellithorpe reasonably suspected  
19 Mr. Smith of being armed and hence were justified in conducting a "pat down" search. Under  
20 *Terry*, an officer may perform a minimal "pat down" if he or she has a reasonable and  
21 articulable suspicion that the suspect is armed and dangerous. *See* 392 U.S. at 21, 30.

22           The Government provides nine factors that it claims contributed to a reasonable  
23 suspicion that Mr. Smith was armed. (Resp. 11-12 (Dkt. No. 24).) Two of the factors concern  
24 Mr. Smith's conduct after his arrest and hence cannot be used to justify the search and seizure.  
25 Two of the factors ("the intimidating way he stared-down one of the motorists" and "the fact  
26 that [Mr.] Smith ignored Officer Kelly's command and chose to walk away") are unsupported

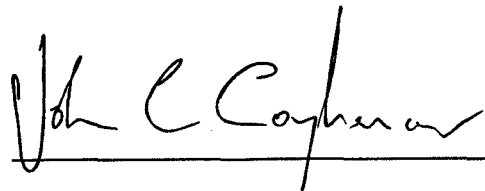
1 by the evidence, as described above. Two other factors ("the attitude conveyed by the cocky,  
2 self-assured manner in which [Mr.] Smith walked across the street" and "the fact that [Mr.]  
3 Smith appeared to be under the influence of alcohol and/or drugs") bear absolutely no  
4 connection to the officers' "suspicion" that Mr. Smith was armed.

5 Thus, the Government is left with only three arguable considerations: (1) the fact that  
6 the area in question is known for gang violence, (2) that Mr. Smith was wearing "bulky,"  
7 "loose fitting clothing" that could potentially conceal a weapon, and (3) that Mr. Smith's left  
8 arm was inside the body of his jacket, with the sleeve hanging loose. (Resp. 11 (Dkt. No. 24).)  
9 As to this last consideration, the video demonstrates that he had been carrying his arm in this  
10 fashion while crossing the street, before the police ever made contact with him. Therefore, the  
11 Government is essentially asking the Court to ratify a search for weapons based only upon the  
12 suspect's clothing style and the characteristics of the neighborhood in which he is found. The  
13 Court believes that this approach would be extremely problematic and could leave countless  
14 residents of lower-income neighborhoods open to debasing, humiliating searches. Such broad  
15 search authority cannot be reconciled with the Fourth Amendment's strict prohibition against  
16 "unreasonable searches and seizures." U.S. CONST. amend. 4.

17 **III. CONCLUSION**

18 For the foregoing reasons, Defendant's Motion to Suppress (Dkt. No. 19) is  
19 GRANTED.

20 DATED this 20th day of August, 2009.

21  
22  
23 

24 John C. Coughenour  
25 United States District Judge  
26

**United States District Court  
Western District of Washington**

**CHARLES SHATEEK SMITH**

SUMMONS IN A CIVIL CASE

v.

CASE NUMBER: \_\_\_\_\_

TO: Benjamin L. Kelly  
(Name of Defendant(s))

SEATTLE Police Department  
(Address of Defendant(s))

\_\_\_\_\_  
(City) (State) (Zip)

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF/  
PLAINTIFF'S ATTORNEY (name and address)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

An answer to the complaint which is herewith served upon you, within \_\_\_\_\_ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for relief demanded in the complaint. You must also file your answer to the clerk of this court within a reasonable period of time after service.

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_  
(By) Deputy Clerk

### RETURN OF SERVICE

I made Service of the Summons and Complaint

Date \_\_\_\_\_

\_\_\_\_\_  
Name of server (*print*)

\_\_\_\_\_  
Title

**Check one box below to indicate appropriate method of service**

☐ Served personally upon the defendant. Place where served: \_\_\_\_\_

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: \_\_\_\_\_

☐ Return Unexecuted: \_\_\_\_\_

☐ Other (*specify*): \_\_\_\_\_

### STATEMENT OF SERVICE FEES

\_\_\_\_\_  
(Travel)

\_\_\_\_\_  
(Services)

\_\_\_\_\_  
(Total)

### DECLARATION OF SERVER

I Declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_

(Date)

\_\_\_\_\_  
(Signature of Server)

\_\_\_\_\_  
(Address of Server)